

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AGILENT TECHNOLOGIES, INC., a
Delaware corporation,
Plaintiff,

INNOVATIVE ENGINEERING
SYSTEMS, INC., d/b/a AGILITECH, a
California corporation,

Defendant.

Case No. 4:22-cv-04162-HSG

STIPULATED PROTECTIVE ORDER RE CONFIDENTIALITY

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 **“CONFIDENTIAL” Information or Items:** information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and/or is not publicly known and is of technical or commercial advantage to its possessor, including trade secret, financial, proprietary, competitive, or

1 commercially sensitive information, or other information required by law or agreement to be kept
2 confidential.

3 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
4 well as their support staff).

5 2.4 Designating Party: a Party or Non-Party that designates information or items that it
6 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
7 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

8 2.5 Disclosure or Discovery Material: all items or information, regardless of the
9 medium or manner in which it is generated, stored, or maintained (including, among other things,
10 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
11 responses to discovery in this matter.

12 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
13 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as
14 a consultant in this action, (2) is not a past or current employee of a Party or of a Party’s
15 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party or
16 of a Party’s competitor.

17 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or
18 Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another
19 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by
20 less restrictive means, which includes, but is not limited to: (a) highly confidential research and
21 development, financial, technical, marketing, any other highly sensitive trade secret information,
22 or information capable of being utilized for the preparation or prosecution of a patent application
23 dealing with such subject matter; (b) highly commercially sensitive competitive information,
24 including, without limitation, information obtained from a non-party pursuant to a current
25 Nondisclosure Agreement (“NDA”); (c) information or data relating to future products not yet
26 commercially released or strategic plans; and (d) commercial agreements, settlement agreements
27 or settlement communications, the disclosure of which is likely to cause harm to the competitive
28 position of the producing party.

1 2.8 House Counsel: attorneys who are employees of a party to this action. House
2 Counsel does not include Outside Counsel of Record or any other outside counsel.

3 2.9 Non-Party: any natural person, partnership, corporation, association, or other legal
4 entity not named as a Party to this action.

5 2.10 Outside Counsel of Record: attorneys who are not employees of a party to this
6 action but are retained to represent or advise a party to this action and have appeared in this action
7 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

8 2.11 Party: any party to this action, including all of its officers, directors, employees,
9 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

10 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
11 Material in this action.

12 2.13 Professional Vendors: persons or entities that provide litigation support services
13 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
14 organizing, storing, or retrieving data in any form or medium) and their employees and
15 subcontractors.

16 2.14 Protected Material: any Disclosure or Discovery Material that is designated as
17 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

18 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a
19 Producing Party.

20 3. SCOPE

21 The protections conferred by this Stipulation and Order cover not only Protected Material
22 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
23 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
24 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
25 However, the protections conferred by this Stipulation and Order do not cover the following
26 information: (a) any information that is in the public domain at the time of disclosure to a
27 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a
28 result of publication not involving a violation of this Order, including becoming part of the public

1 record through trial or otherwise; and (b) any information known to the Receiving Party prior to
2 the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained
3 the information lawfully and under no obligation of confidentiality to the Designating Party. Any
4 use of Protected Material at trial shall be governed by a separate agreement or order.

5 **4. DURATION**

6 Even after final disposition of this litigation, the confidentiality obligations imposed by this
7 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
8 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims
9 and defenses in this action, with or without prejudice; and (2) final judgment herein after the
10 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
11 including the time limits for filing any motions or applications for extension of time pursuant to
12 applicable law.

13 **5. DESIGNATING PROTECTED MATERIAL**

14 **5.1 Exercise of Restraint and Care in Designating Material for Protection.** Each Party
15 or Non-Party that designates information or items for protection under this Order must take care to
16 limit any such designation to specific material that qualifies under the appropriate standards. To
17 the extent it is practical to do so, the Designating Party must designate for protection only those
18 parts of material, documents, items, or oral or written communications that qualify – so that other
19 portions of the material, documents, items, or communications for which protection is not
20 warranted are not swept unjustifiably within the ambit of this Order.

21 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
22 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
23 unnecessarily encumber or retard the case development process or to impose unnecessary
24 expenses and burdens on other parties) expose the Designating Party to sanctions.

25 If it comes to a Designating Party's attention that information or items that it designated
26 for protection do not qualify for protection at all or do not qualify for the level of protection
27 initially asserted, that Designating Party must promptly notify all other parties that it is
28 withdrawing the mistaken designation.

1 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
2 (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise stipulated or ordered,
3 Disclosure or Discovery

4 Material that qualifies for protection under this Order must be clearly so designated before
5 the material is disclosed or produced.

6 Designation in conformity with this Order requires:

7 (a) for information in documentary form (e.g., paper or electronic documents, but
8 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
9 affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
10 ONLY” to each page that contains protected material. If only a portion or portions of the material
11 on a page qualifies for protection, the Producing Party also must clearly identify the protected
12 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
13 portion, the level of protection being asserted.

14 A Party or Non-Party that makes original documents or materials available for inspection
15 need not designate them for protection until after the inspecting Party has indicated which material
16 it would like copied and produced. During the inspection and before the designation, all of the
17 material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –
18 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants
19 copied and produced, the Producing Party must determine which documents, or portions thereof,
20 qualify for protection under this Order. Then, before producing the specified documents, the
21 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY
22 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) to each page that contains Protected
23 Material. If only a portion or portions of the material on a page qualifies for protection, the
24 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
25 markings in the margins) and must specify, for each portion, the level of protection being asserted.

26 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
27 Designating Party identify on the record, before the close of the deposition, hearing, or other
28 proceeding, all protected testimony and specify the level of protection being asserted. When it is

1 impractical to identify separately each portion of testimony that is entitled to protection and it
2 appears that substantial portions of the testimony may qualify for protection, the Designating Party
3 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right
4 to have up to 21 days to identify the specific portions of the testimony as to which protection is
5 sought and to specify the level of protection being asserted. Only those portions of the testimony
6 that are appropriately designated for protection within the 21 days shall be covered by the
7 provisions of this Stipulated Protective Order. Alternatively, a Designating Party may specify, at
8 the deposition or up to 21 days afterwards if that period is properly invoked, that the entire
9 transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
10 ATTORNEYS’ EYES ONLY.”

11 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or
12 other proceeding to include Protected Material so that the other parties can ensure that only
13 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”
14 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
15 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
16 – ATTORNEYS’ EYES ONLY.”

17 Transcripts containing Protected Material shall have an obvious legend on the title page
18 that the transcript contains Protected Material, and the title page shall be followed by a list of all
19 pages (including line numbers as appropriate) that have been designated as Protected Material and
20 the level of protection being asserted by the Designating Party. The Designating Party shall inform
21 the court reporter of these requirements. Any transcript that is prepared before the expiration of a
22 21-day period for designation shall be treated during that period as if it had been designated
23 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise
24 agreed. After the expiration of that period, the transcript shall be treated only as actually
25 designated.

26 (c) for information produced in some form other than documentary and for any other
27 tangible items, that the Producing Party affix in a prominent place on the exterior of the container
28 or containers in which the information or item is stored the legend “CONFIDENTIAL” or

1 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions of the
2 information or item warrant protection, the Producing Party, to the extent practicable, shall
3 identify the protected portion(s) and specify the level of protection being asserted.

4 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
5 designate qualified information or items does not, standing alone, waive the Designating Party’s
6 right to secure protection under this Order for such material. Upon timely correction of a
7 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
8 in accordance with the provisions of this Order.

9 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

10 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
11 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
12 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
13 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
14 challenge a confidentiality designation by electing not to mount a challenge promptly after the
15 original designation is disclosed.

16 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
17 process by providing written notice of each designation it is challenging and describing the basis
18 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
19 notice must recite that the challenge to confidentiality is being made in accordance with this
20 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in
21 good faith and must begin the process by conferring directly (in voice to voice dialogue; other
22 forms of communication are not sufficient) within 14 days of the date of service of notice. In
23 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
24 designation was not proper and must give the Designating Party an opportunity to review the
25 designated material, to reconsider the circumstances, and, if no change in designation is offered, to
26 explain the basis for the chosen designation. A Challenging Party may proceed to the next stage of
27 the challenge process only if it has engaged in this meet and confer process first or establishes that
28 the Designating Party is unwilling to participate in the meet and confer process in a timely

1 manner.

2 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
 3 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
 4 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of
 5 the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer
 6 process will not resolve their dispute, whichever is earlier. Each such motion must be
 7 accompanied by a competent declaration affirming that the movant has complied with the meet
 8 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to
 9 make such a motion including the required declaration within 21 days (or 14 days, if applicable)
 10 shall automatically waive the confidentiality designation for each challenged designation. In
 11 addition, the Challenging Party may file a motion challenging a confidentiality designation at any
 12 time if there is good cause for doing so, including a challenge to the designation of a deposition
 13 transcript or any portions thereof. Any motion brought pursuant to this provision must be
 14 accompanied by a competent declaration affirming that the movant has complied with the meet
 15 and confer requirements imposed by the preceding paragraph.

16 The burden of persuasion in any such challenge proceeding shall be on the Designating
 17 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
 18 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
 19 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to
 20 file a motion to retain confidentiality as described above, all parties shall continue to afford the
 21 material in question the level of protection to which it is entitled under the Producing Party's
 22 designation until the court rules on the challenge.

23 7. ACCESS TO AND USE OF PROTECTED MATERIAL

24 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
 25 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
 26 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
 27 the categories of persons and under the conditions described in this Order. When the litigation has
 28 been terminated, a Receiving Party must comply with the provisions of Section 13 below (FINAL

1 DISPOSITION).

2 Protected Material must be stored and maintained by a Receiving Party at a location and in
3 a secure manner that ensures that access is limited to the persons authorized under this Order.

4 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
5 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
6 information or item designated “CONFIDENTIAL” only to:

7 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of
8 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for
9 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is
10 attached hereto as Exhibit A;

11 (b) the officers, directors, and employees (including House Counsel) of the Receiving
12 Party to whom disclosure is reasonably necessary for this litigation and who have signed the
13 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

14 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
15 reasonably necessary for this litigation and who have signed the “Acknowledgment and
16 Agreement to Be Bound” (Exhibit A);

17 (d) the court and its personnel;

18 (e) court reporters and their staff, professional jury or trial consultants, and Professional
19 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the
20 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

21 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
22 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
23 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed
24 deposition testimony or exhibits to depositions that reveal Protected Material must be separately
25 bound by the court reporter and may not be disclosed to anyone except as permitted under this
26 Stipulated Protective Order.

27 (g) the author or recipient of a document containing the information or a custodian or other
28 person who otherwise possessed or knew the information.

1 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

2 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
3 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

5 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of
6 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for
7 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is
8 attached hereto as Exhibit A;

9 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this
10 litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
11 and (3) as to whom the procedures set forth in Section 7.4(a), below, have been followed;

12 (c) the court and its personnel;

13 (d) court reporters and their staff, professional jury or trial consultants, and Professional
14 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the
15 “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

16 (e) the author or recipient of a document containing the information or a custodian or other
17 person who otherwise possessed or knew the information.

18 7.4 Procedures for Approving or Objecting to Disclosure of “CONFIDENTIAL –
19 ATTORNEYS’ EYES ONLY” Information or Items to Experts.

20 (a) Unless otherwise ordered by the court or agreed to in writing by the Designating Party,
21 a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that
22 has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to
23 Section 7.3(b) first must make a written request to the Designating Party that (1) identifies the
24 general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information
25 that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of
26 the Expert and the city and state of his or her primary residence, (3) attaches a copy of the Expert’s
27 current resume, (4) identifies the Expert’s current employer(s), (5) identifies each person or entity
28 from whom the Expert has received compensation or funding for work in his or her areas of

1 expertise or to whom the expert has provided professional services, including in connection with a
 2 litigation, at any time during the preceding five years,¹ and (6) identifies (by name and number of
 3 the case, filing date, and location of court) any litigation in connection with which the Expert has
 4 offered expert testimony, including through a declaration, report, or testimony at a deposition or
 5 trial, during the preceding five years.

6 (b) A Party that makes a request and provides the information specified in the preceding
 7 respective paragraphs may disclose the subject Protected Material to the identified Designated
 8 House Counsel or Expert unless, within 14 days of delivering the request, the Party receives a
 9 written objection from the Designating Party. Any such objection must set forth in detail the
 10 grounds on which it is based.

11 (c) A Party that receives a timely written objection must meet and confer with the
 12 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
 13 agreement within seven days of the written objection. If no agreement is reached, the Party
 14 seeking to make the disclosure to Designated House Counsel or the Expert may file a motion as
 15 provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable)
 16 seeking permission from the court to do so. Any such motion must describe the circumstances
 17 with specificity, set forth in detail the reasons why the disclosure to Designated House Counsel or
 18 the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and
 19 suggest any additional means that could be used to reduce that risk. In addition, any such motion
 20 must be accompanied by a competent declaration describing the parties' efforts to resolve the
 21 matter by agreement (i.e., the extent and the content of the meet and confer discussions) and
 22 setting forth the reasons advanced by the Designating Party for its refusal to approve the
 23 disclosure.

24 In any such proceeding, the Party opposing disclosure to Designated House Counsel or the
 25
 26

27 ¹ If the Expert believes any of this information is subject to a confidentiality obligation to a third-
 28 party, then the Expert should provide whatever information the Expert believes can be disclosed
 without violating any confidentiality agreements, and the Party seeking to disclose to the Expert
 shall be available to meet and confer with the Designating Party regarding any such engagement.

1 Expert shall bear the burden of proving that the risk of harm that the disclosure would entail
2 (under the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected
3 Material to its Designated House Counsel or Expert.

4 8. **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**
LITIGATION

5 If a Party is served with a subpoena or a court order issued in other litigation that compels
6 disclosure of any information or items designated in this action as "CONFIDENTIAL" or
7 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" that Party must:

8 (a) promptly notify in writing the Designating Party. Such notification shall include a copy
9 of the subpoena or court order;

10 (b) promptly notify in writing the party who caused the subpoena or order to issue in the
11 other litigation that some or all of the material covered by the subpoena or order is subject to this
12 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

13 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
14 Designating Party whose Protected Material may be affected.

15 If the Designating Party timely seeks a protective order, the Party served with the subpoena
16 or court order shall not produce any information designated in this action as "CONFIDENTIAL"
17 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" before a determination by the
18 court from which the subpoena or order issued, unless the Party has obtained the Designating
19 Party's permission. The Designating Party shall bear the burden and expense of seeking protection
20 in that court of its confidential material – and nothing in these provisions should be construed as
21 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from
22 another court.

23 9. **A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS**
LITIGATION

24 (a) The terms of this Order are applicable to information produced by a Non-Party in
25 this action and designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
26 ATTORNEYS' EYES ONLY." Such information produced by Non-Parties in connection with
27 this litigation is protected by the remedies and relief provided by this Order. Nothing in these
28

provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party, or its principal, not to produce the Non-Party's confidential information, then the Party shall:

1. promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party, or its principal;

2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

3. make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

1 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
2 MATERIAL

3 When a Producing Party gives notice to Receiving Parties that certain inadvertently
4 produced material is subject to a claim of privilege or other protection, the obligations of the
5 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).² This
6 provision is not intended to modify whatever procedure may be established in an e-discovery order
7 that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence
8 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
9 communication or information covered by the attorney-client privilege or work product protection,
10 the parties may incorporate their agreement in the stipulated protective order submitted to the
court.

11 12. MISCELLANEOUS

12 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
13 seek its modification by the court in the future.

14 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
15 Order no Party waives any right it otherwise would have to object to disclosing or producing any
16 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
17 Party waives any right to object on any ground to use in evidence of any of the material covered
18 by this Protective Order.

19 12.3 Filing Protected Material. Without written permission from the Designating Party
20 or a court order secured after appropriate notice to all interested persons, a Party may not file in
21 the public record in this action any Protected Material. A Party that seeks to file under seal any
22 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
23 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
24 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request
25 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or
26 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected

1 Material under seal pursuant to Civil Local Rule 79-5 is denied by the court, then the Receiving
2 Party may file the Protected Material in the public record pursuant to Civil Local Rule 79-5 unless
3 otherwise instructed by the court.

4 13. **FINAL DISPOSITION**

5 Within 60 days after the final disposition of this action, as defined in Section 4, each
6 Receiving Party must return all Protected Material to the Producing Party or destroy such material.
7 As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations,
8 summaries, and any other format reproducing or capturing any of the Protected Material. Whether
9 the Protected Material is returned or destroyed, the Receiving Party must submit a written
10 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)
11 by the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected
12 Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained
13 any copies, abstracts, compilations, summaries or any other format reproducing or capturing any
14 of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival
15 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
16 correspondence, deposition and trial exhibits, expert reports, attorney work product, and
17 consultant and expert work product, even if such materials contain Protected Material. Any such
18 archival copies that contain or constitute Protected Material remain subject to this Protective Order
19 as set forth in Section 4 (DURATION).

20 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: 2/21/2023

Haywood S. Gilliam, Jr.
United States District Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read and understand the Stipulated Protective Order that was issued by the United States for the Northern District of California on [date] in the case of _____ **[insert of the case and the number and initials assigned to it by the court]**. I agree to and to be bound by all the terms of this Stipulated Protective Order and I understand that failure to so comply could expose me to sanctions and punishment in the event. I solemnly promise that I will not disclose in any manner any information or subject to this Stipulated Protective Order to any person or entity except in strict with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone number]
as my California agent for service of process in connection with this action or any proceedings
related to enforcement of this Stipulated Protective Order.

Date:

City and State where sworn and signed:

Printed name: _____
[printed name]

Signature: _____
[signature]